



Comptroller General  
of the United States

6162212

Washington, D.C. 20548

## Decision

**Matter of:** Reliable Trash Service, Inc.

**File:** B-258208

**Date:** December 20, 1994

David K. Monroe, Esq., Jeffrey K. Kominers, Esq., and John P. Young, Esq., Galland, Kharasch, Morse & Garfinkle, P.C., for the protester.

Theodore Bailey, Esq., and Garreth E. Shaw, Esq., Bailey, Shaw & Deadman, P.C., for Red River Service Corporation, an interested party.

Elizabeth Berrigan, Esq., and Gary M. Parker, Esq., Department of the Army, for the agency.

Mary G. Curcio, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. General Accounting Office will not consider a protest that the contracting agency should have requested the awardee to verify its offer due to a mistake in the offer since it is solely the responsibility of the contracting parties to assert rights and bring forth the necessary evidence to resolve mistake questions.

2. Protest that awardee's offer should have been found technically unacceptable for failure to understand solicitation requirements based on awardee's alleged failure to include waste disposal fees in its offer for certain line items is denied since contracting agency found that awardee understood the performance requirements of the solicitation, and even if awardee did not understand who was responsible for paying certain disposal fees, that is an insufficient basis to conclude that awardee's proposal was technically unacceptable given the fixed-priced nature of the contract and the fact that the awardee did not take exception to any of the performance requirements.

### DECISION

Reliable Trash Service, Inc. protests the award of a contract to Red River Service Corporation under request for proposals (RFP) No. DABT57-93-R-0022, issued by the Department of the Army for the collection and disposal of waste. Reliable asserts that the Army improperly failed to request Red River to verify its offer and that Red River's

offer should have been found technically unacceptable because Red River did not understand the RFP requirements.

We deny the protest.

The solicitation requested proposals for the collection, transportation, and disposal of waste from Fort Eustis, Yorktown Naval Weapons Center, Cheatham Annex and the Army Reserve Center in Hampton, Virginia for a base period of 1 month with 4 option years. The RFP included approximately 240 line items for collection of waste, rental of waste containers, transportation of waste to specified disposal sites, and disposal of waste and included an estimated quantity for each line item. The line items were broken down by performance period and location.

With the exception of some of the line items which included disposal work, offerors were required to propose a fixed price to perform each line item. For most of the line items which included disposal, the government will be responsible for paying the disposal fees and therefore the solicitation included an amount for the disposal fees in the appropriate line items. On the other hand, for the base year line items 0054, 0055, and 0056, each of which involved the collection, transportation, and disposal of certain types of waste from the Yorktown Naval Weapons Center, and the corresponding three line items for the same services in each of the option years, the contractor will be responsible for the disposal fees. Consequently, offerors were required to include an amount for the disposal fees in their proposed prices for these line items.

Offerors also were required to submit a technical proposal which was to be evaluated against the following criteria:

1. Comprehension and understanding of overall contract specifications and performance requirements;
2. Organization and staffing;
3. Demonstrated ability to provide necessary management, equipment, and personnel necessary for successful performance;

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<sup>1</sup>The corresponding line items in the option years were 0154, 0155, 0156, 0254, 0255, 0256, 0354, 0355, 0356, 0454, 0455, and 0456. Throughout the rest of the decision, we refer to all 15 line items in question as line items 54, 55, and 56.

4. Quality control;

5. Experience.

Finally, on a "Contractor's Submittal Form" included in the solicitation, offerors were required to provide information concerning the number and cost of vehicles and equipment and waste containers that would be used to perform the contract, and labor costs and disposal fees for each type of waste for each location. The form stated that the data provided would be used with other information provided by the offeror to ascertain the offeror's understanding of the requirements of the contract. The solicitation provided that the contract would be awarded to the responsible offeror submitting the low-priced, technically acceptable offer.

Six offerors responded to the RFP. The technical proposals were evaluated and the proposals submitted by the protester and the awardee were both found acceptable. Red River submitted the low-priced offer and Reliable submitted the second-low offer. Award was made to Red River as the low-priced, technically acceptable offeror. This protest followed.

Reliable first protests that Red River's proposed prices for line items 54, 55, and 56 are less than the cost of the disposal fees alone for these items. Reliable asserts that there thus was an obvious mistake in Red River's offer for these items and that the Army improperly failed to request Red River to verify its prices, request withdrawal of its offer, or request correction of its bid.

Our Office will not consider one offeror's claim that a lower offer may be mistaken since it is the responsibility of the contracting parties--the government and the low offeror--to assert rights and bring forth the necessary evidence to resolve mistake questions. W.M. Schlosser Co. Inc., B-254968, Oct. 1, 1993, 93-2 CPD ¶ 201. While Reliable asserts that it is not protesting a mistake in Red River's offer, but rather, the Army's failure to request Red River to verify the offer, the underlying issue is the same--an alleged mistake in Red River's offer--and the same rule applies. See Sabreliner Corp., B-231200, Aug. 31, 1988, 88-2 CPD ¶ 194. Accordingly, we will not consider this basis of protest.

Reliable next protests that Red River's proposal should have been rejected as technically unacceptable. As discussed above, offerors were to submit information on the contractor's submittal form concerning the disposal fees by location and the type of waste. In completing the form, Red River inserted, "See RFP, Section B, Schedule of Prices." Reliable notes that for line items 54, 55, and 56, the

disposal fees were not included in section B of the RFP. Reliable asserts that it is clear from Red River's low prices for line items 54, 55, and 56 that Red River did not include disposal fees in its offer for these items and, according to the protester, since Red River did not detail the fees as required by the RFP, it is clear that Red River did not understand the contract requirements concerning responsibility for paying those fees. Reliable asserts that disposal fees are an enormous cost factor for this contract and that an understanding of anticipated disposal fees is central to an understanding of the contract requirements. According to Reliable, a contractor that has not identified and accounted for a cost factor constituting in excess of 10 percent of the net offer cannot reasonably be found to understand the requirements of the RFP.

The Army argues that it would have been contrary to the RFP evaluation criteria to reject Red River's proposal on the basis of allegedly defective pricing for a few line items. Rather, the Army states that, in evaluating the technical proposals, it analyzed them for comprehension of the contract requirements and Red River's proposal demonstrated an overall understanding of the solicitation requirements. The Army further asserts that a review of Red River's proposed prices on a per site and overall basis demonstrated that Red River understood the solicitation requirements.

Based on our review of the record, we find no basis to conclude that the Army should have rejected Red River's proposal as technically unacceptable for failing to understand the requirements of the RFP based on Red River's pricing of line items 54, 55, and 56. First, Reliable's protest concerns whether Red River understood who was responsible for paying the disposal fees. Under section M of the solicitation, the Army was required to evaluate comprehension and understanding of overall contract specifications and performance requirements. These specifications and performance requirements were set out in section C of the solicitation and in five technical exhibits, which detail how and when the work is to be performed, not who is responsible for payment of the disposal fees. Thus, although Red River may have misconstrued who will be responsible for paying the disposal fees on some line items, this does not necessarily demonstrate that Red River failed to understand the actual specifications and performance requirements related to disposal.


In any case, even if in evaluating Red River's understanding of the requirements of the solicitation, the Army was required to consider whether Red River understood who was responsible for paying the disposal fees, there is no basis to conclude that the Army was required to find that Red

River's proposal was technically unacceptable because Red River did not include disposal fees in line items 54, 55, and 56 or in the contractor's submittal form. Red River's understanding of who was responsible for paying disposal fees for these line items would constitute only a small part of the evaluation of Red River's proposal for technical evaluation factor 1, which concerned understanding and comprehension of the overall contract specifications and performance requirements. Since Reliable does not argue, and there is no basis in the record to conclude, that Red River did not otherwise understand the performance requirements of the solicitation relating to disposal, the Army would not be required to find Red River's proposal unacceptable for this evaluation factor solely because Red River's offer did not include disposal fees for line items 54, 55, and 56.

In addition, understanding the requirements and specifications was only one of five equally weighted technical evaluation factors. Because this is a fixed-price contract and Red River did not take exception to any of the solicitation's performance requirements, there is no basis to conclude that Red River's proposal was technically unacceptable on the basis of some question concerning Red River's understanding of who will be responsible for paying the disposal fees--at most, a consideration in evaluating Red River's technical proposal under only one of the five technical evaluation factors.

Finally, to the extent Reliable may be protesting that Red River may be unable to perform at its low price, the submission of a below-cost offer on a fixed-price contract is legally unobjectionable and whether an offeror can perform at its proposed price concerns the offeror's responsibility. General Elec. Ocean and Radar Sys. Div., B-250418; B-250419, Jan. 11, 1993, 93-1 CPD ¶ 30. Here, the contracting officer determined that Red River is responsible. Our Office will not review that determination absent a showing of fraud or bad faith or a failure to properly apply definitive responsibility criteria, id., circumstances not present in this case.

The protest is denied.

*for*   
Robert P. Murphy  
General Counsel